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Testimony Submitted by Steven L. Rubin on March 10, 2022 to the Committee on Aging on behalf of the Connecticut Chapter of the National Academy of Elder Law Attorneys

I am a Certified Elder Law Attorney by the National Elder Law Foundation, practicing Elder Law, Special Needs Planning, Public Benefit Law and Estate Planning based out of Milford Connecticut. I am the President of the Connecticut Chapter of the National Academy of Elder Law Attorneys and served on the Senior Fraud Legislative Task Force. I testify before you today on a number of different issues.

In regards to SB264 An Act Concerning a Qualified Deduction from Medicaid Applied Income for Conservator Costs

Being a conservator is a time-consuming job requiring diligent representation as a fiduciary to obtain financial information, ensure proper health care and applying for and managing an individual's eligibility for public benefits. In my practice I have seen conservators put in significant periods of time, sometimes more than 100 hours in order to handle these concerns. Some of them were professionals and others were children of an individual who is conserved.

Medicaid has strict eligibility requirements which includes spending down all of one's assets and paying the patient liability amount, also known as their income, to the nursing home for care. Many times, it leaves the conservator in an unenviable position—do we qualify for benefits and risk not being paid at all, do we take funds from the estate at a much lower rate than what they would get normally, or do they turn down these cases to avoid the situation entirely.

SB264 works to fix that situation by ensuring that the income of an individual who's receiving benefits can be used to pay the conservator who acts on their behalf. While I am in support of this legislation, I do not think it goes far enough. In situations where there is a spenddown and projected conservator fees, an amount equal to the projected fee should be held in escrow and not counted as an asset or an improper transfer of funds for purposes of their Medicaid application.

In support of HB5314 An Act Deterring Fraud and Abuse Perpetrated Against Senior Citizens

As a member of the task force, and President of CTNAELA, I fully support the proposed legislation. Based on my personal experiences as an Elder Law Attorney and the testimony we heard regarding the issue, it is not only a Connecticut problem but one that is spreading across the country. Other states have already worked on this issue and its high time Connecticut act to protect its seniors.

Medicaid is a complex set of federal and state laws that have be navigated in order to properly apply for benefits. Mistakes in this area can be costly for your client and their family. Certain assets are considered to be unavailable to an individual through the Medicaid application process, and some transfers based on marital status, disability, age and other factors are legal. These laws are designed to provide resources for spouses, protection for disabled family members and caregiver children, as well as preventing longer term expenses to the state and other programs. With the complexity of these regulations, and the rise of non-attorney Medicaid planners has led to situations that I have seen in my own practice, as well as heard about from others that could have been avoided with proper planning, advice, and warnings.

Based on the testimony that was heard at the task force, my experiences as an attorney and communicating with others nationally, the disclosures that exist in SB5314 are necessary and looking at the proposals in New York, and the other states that have already approached this issue, disclosures seem to be the best starting point for halting this form of Fraud.

Personally, I have had a number of situations in my practice with non-attorney advisors, but a few jump out at me. I had one client who was pushed into using a non-attorney advisor, although having already completed her estate plan with us, and thinking the cost savings would make up for it, and so they signed with the company. A few weeks after signing, the client called me because the Advisor didn't understand the estate plan, how it would work or what anything meant. The Advisor wanted me to explain it to them so they knew how to utilize it in a Medicaid plan. This puts me, as the attorney, in an awkward situation. I want to assist my now former client as best I can, but ethically I cannot assist someone in what I believe to be the unauthorized practice of law.

Another more recent situation involved a child who has been living in the home for years providing care. The non-attorney advisor they went to prior to coming to see us had told the child to apply for benefits without doing anything with the house, and the state would eventually recover through probate. Thankfully, a friend suggested she see us. After evaluating the situation, we realized that if not for the care that had been provided by the child for over 6 years, the parent would have needed care in a nursing

home. Therefore, we could transfer the house to this child free and clear because of the child being a caregiver.

The importance of these issues, protecting individual's rights, cannot be understated here. Passing these notices is a good first step to protecting the rights of seniors from Medicaid Fraud. Not getting proper advice can prevent someone from receiving benefits they are entitled to and ensuring proper representation is an important step toward resolving this issue.

I fully support passing this bill and I am available for any questions and any further information that I can provide for you.

Very truly yours,

Steven L. Rubin